

DDIA Registry
File *Security 4-1*

DDA 76-2925

14 JUN 1976

Mr. Fernando Oaxaca
Associate Director for Management
and Operations
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Oaxaca:

I refer to your letter of 18 May 1976 requesting that OMB be advised of the CIA procedures for handling Congressional inquiries on behalf of constituents seeking information under the Privacy Act.

In formulating CIA procedures to cover this matter, we were mindful that members of Congress are obligated to serve their constituency quickly and effectively. We also had to take into account that much of the information held by CIA is of a sensitive nature and should not be subject to the possibility of dissemination to persons other than the individual concerned. We have, therefore, established an Agency policy for handling Congressional inquiries that requires the express written consent of the individual concerned prior to the release of information to a Congressional office. The implementing procedures described below fall within the context of our present regulations and Notice of Systems of Records published in the Federal Register.

CIA responds to inquiries on behalf of individuals by corresponding directly with the individual, acknowledging that the request was made through the Congressional office and informing the individual, when necessary, of the requirements for identification pursuant to our regulations. A letter acknowledging the request is sent to the member of Congress advising that CIA is in direct contact with the constituent and that the results of the record search will be forwarded directly to the requester.

Mr. Fernando Oaxaca — 2

Congressional inquiries which request that correspondence and results of the record search be forwarded directly to the Congressional office are handled as exceptions to the procedure outlined above. In these cases, the express written consent of the constituent is required before the result of the record search is forwarded to the Congressional office. All correspondence is sent directly to the Congressional office; CIA does not contact the constituent. If the search results contain sensitive information on the constituent, the information is addressed to the member of Congress with the caveat "To be opened only by member of Congress."

Our experience thus far indicates that these procedures are working well. The majority of the Congressional inquiries are handled by corresponding directly with the individual concerned. The Congressional offices recognize that the Agency must have sufficient identifying information to initiate a record search and, too, routing such correspondence through Congressional offices on a routine basis would be time consuming and counterproductive. Moreover, our procedures provide for exceptional handling whereby information on a constituent may be forwarded directly to the Congressional office. Although we have had only a few cases where the exception procedure applied, Congressional offices have been understanding and cooperative in providing the necessary documentation.

Sincerely,

/s/John E. Blake

John F. Blake
Deputy Director
for
Administration

STATINTL

O/AI/DDA: [] ydc (9 June 1976)

Distribution:

Original - Addressee

- 1 - OLC
- 1 - OGC
- 1 - IPS
- ✓ 1 - DDA Subject w/reference
- 1 - DDA Chrono
- 1 - JEP Chrono

BACKGROUND MATERIAL

- TAB A Letter to DDA from Mr. Oaxaca, OMB, dtd 18 May 76, re current policies and procedures for handling Congressional case work inquiries in CIA.
- TAB B Letter to Acting General Counsel from Mr. Nichols, Acting General Counsel, OMB, dtd 22 Jan 76, re processing of Congressional inquiries under the Privacy Act.
- TAB C Letter to Mr. Lynn, Director, OMB, from Acting General Counsel, dtd 23 Dec 75, re OMB recommendations concerning procedures of response to Congressional inquiries which entail access to personal information subject to the Privacy Act.
- TAB D Memo for C/IPS and LC from DDA dtd 15 Dec 75, subj: Congressional Inquiries on Behalf of Constituents and the Privacy Act

A

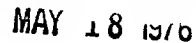
REFERENCE MATERIAL

TABS A, B, C, D

STATINTL

PLEASE RETURN TO

O-DD/A
ROOM 7D18, HQS



Approved For Release 2002/06/11 : CIA-RDP79-00498A000600110012-0



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 3 1975

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Congressional inquiries which entail access to personal information subject to the Privacy Act

This memorandum provides additional guidance to Executive Departments and Agencies on responding to congressional inquiries which involve access to personal information subject to the Privacy Act of 1974 (5 U.S.C. 552a). This guidance has been coordinated with the congressional committees with legislative jurisdiction and the principal agencies affected. It is intended to assure that implementation of the Act does not have the unintended effect of denying individuals the benefit of congressional assistance which they request.

It is recommended that each agency establish the following as a routine use for all of its systems, consistent with subsections (a)(7) and (e)(11) of the Act:

"Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual."

The operation of this routine use will obviate the need for the written consent of the constituent in every case where the constituent requests assistance of the Member which would entail a disclosure of information pertaining to the constituent.

In those cases where the congressional inquiry indicates that the request is being made on behalf of a person other than the individual whose record is to be disclosed, the agency should advise the congressional office that the written consent of the subject of the record is required. The agency should not contact the subject unless the congressional office requests it to do so.

In addition to the routine use, agencies can, of course, respond to many congressional requests for assistance on behalf of individuals without disclosing personal information which would fall within the Privacy Act, e.g., a

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EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

GENERAL COUNSEL

JAN 22 1976

STATINTL

[Redacted]

Acting General Counsel
Central Intelligence Agency
Washington, D. C. 20505

STATINTL

[Redacted]

Mr. Lynn has asked me to respond to your letter of December 23, 1975 in which you expressed your belief that the recommendations contained in our October 3, 1975 memorandum concerning the processing of congressional inquiries under the Privacy Act are inconsistent with the spirit and letter of the Act. The essence of that October 3 memorandum has recently been published as a supplement to the OMB Guidelines in the December 4 edition of the Federal Register.

We have had some difficulty understanding the scope of and basis for your statement that our guidance is inconsistent with the spirit and the letter of the Privacy Act. To begin with, it should be stated again that the OMB Guidelines are "interpretative guidelines" as that phrase is used in Section 553 of Title 5, United States Code, and therefore they are not binding upon you in the sense that a regulation issued pursuant to law would be. You are able, as you are undoubtedly aware, to deviate from such guidance when you choose to do so since the operation of the Privacy Act is premised on agency action and upon the principle that the agencies will be held responsible and accountable for these actions. Accordingly, the Act affords to each agency substantial discretion to adjust the manner in which the Act operates to the unique environment of that agency. The guidelines are an attempt to aid agency interpretations and implementation, but the final responsibility for making decisions under the Act and the accountability for such actions rests with each agency.

The guidance with which you disagree suggests a number of ways in which a response to a congressional inquiry may be accomplished in compliance with the Privacy Act, and indeed one of those suggested methods is an agency response directly to the constituent instead of to or

through the congressional office involved.* Since your proposed method for responding to congressional inquiries utilizes this procedure, it is assumed that your disagreement with our guidance is not with this portion of it, except possibly to the extent that our guidance recommends obtaining congressional concurrence before direct agency contact with the constituent. You should be aware that in this regard and in others, our guidance was formulated in light of the concerns of various members of Congress, and our urging that an agency seek congressional concurrence before direct contact with the constituent was designed to avoid perceived interference with the constituent-Congressman relationship.

Presumably, you would furnish upon request from a congressional office information which would be required by the Freedom of Information Act; would utilize the exceptions of 5 U.S.C. 552a(b)(8) and (9) in appropriate circumstances; and would continue to respond to congressional inquiries not entailing disclosures of information covered by the Privacy Act as in the past. These are all procedures recommended in our guidance.

To the extent then that your disagreement concerns only our recommendations for a "routine use", or situations in which we urge that the consent of the individual be implied, we believe that an agency would, notwithstanding the promulgation of a "routine use", have the discretion to withhold such information in a particular instance. Except in instances not relevant here, the exceptions to the requirement for advance written consent of the individual are utilized at the discretion of the agency maintaining the information and are not mandatory. This is as true for the "routine use" as it would be for disclosures to an investigatory agency pursuant to 5 U.S.C. 552a(b)(7).

Your letter also presents other problems. First, it should be noted that the advance written consent of the individual is not necessary for disclosures under any of the exceptions set forth in 5 U.S.C. 552a(b), and not solely under (b)(3) as your letter indicates. Furthermore, although you are correct in stating that the Privacy Act provides

*See December 4, 1975 Federal Register, p. 56742, "Personal information can be disclosed in response to a congressional inquiry without written consent or operation of a routine use--

* * *

If the member requests then the response go directly to the individual, to whom the record pertains".

for a criminal penalty, it is only a willful unauthorized disclosure with the actual knowledge that the disclosure is unauthorized that is made punishable by the Privacy Act. Your requirement that a notarized statement of identity be required in every instance is contrary to other portions of our guidelines. Such a requirement would be inappropriate, for instance, when the information would be required to be disclosed under the Freedom of Information Act. Although your letter does not reflect it, presumably you would honor an individual's advance written authorization for release of information to a Congressman.

If your letter is intended to indicate that you have elected not to issue a "routine use" as recommended in our guidance, that decision, as opposed to the basis for it, is understandable and clearly one which you are authorized to make. On the other hand, if you believe that our guidance in this matter is inconsistent with the spirit and the letter of the Privacy Act, we disagree. In any event, we suggest that you review your proposed procedures in light of this letter.

You may also wish to discuss this matter with the Office of the Legal Counsel and the Civil Division of the Department of Justice and the cognizant legislative subcommittees of Congress with whom our guidance was coordinated.

Sincerely,

William M. Nichols
William M. Nichols
Acting General Counsel

STATINTL Letter to Mr. [] Acting General Counsel, Central Intelligence Agency.

cc: Clarence M. Kelley, Director, Federal Bureau of Investigation
Assistant Director McDermott, Federal Bureau of Investigation
Unit Chief Dennis, Federal Bureau of Investigation
John A. Mintz, Federal Bureau of Investigation
Rex Davis, Director, Bureau of Alcohol, Tobacco and Firearms
Marvin Dessler, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms
Vernon D. Acree, Commissioner, U.S. Customs Service
Leonard Lehman, Assistant Commissioner for Regulations and Rulings,
U.S. Customs Service
Henry Dogin, Acting Administrator, Drug Enforcement Administration
Donald Miller, General Counsel, Drug Enforcement Administration
Leonard F. Chapman, Jr., Commissioner, Immigration and Naturalization
Service
Sam Bernsen, General Counsel, Immigration and Naturalization Service
Charles A. Gibb, Chief, Disclosure Staff to Assistant Commissioner for
Compliance, Internal Revenue Service
Harold T. Flanagan, Director, Disclosure Division, Chief Counsel's
Office, Internal Revenue Service
William Hall, Deputy Director, United States Marshals Service
Gerald M. Auerbach, Associate Legal Counsel, United States Marshals Service
C. Neil Benson, Chief Inspector, United States Postal Service
Louis J. Ansaldi, Legal Assistant, United States Postal Service
Lilburn Boggs, Deputy Director, United States Secret Service
Robert Goff, Associate Counsel, United States Secret Service
John F. Blake, Deputy Director for Administration, Central Intelligence Agency

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

OGC 75-4820
23 December 1975

ATTACHMENT

Form 163a
8-66

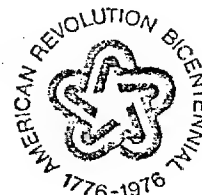
Honorable James T. Lynn, Director
Office of Management and Budget
Executive Office Building
Washington, D.C. 20503

Dear Mr. Lynn:

This letter is in response to your memorandum of 3 October 1975 recommending procedures of response to congressional inquiries which entail access to personal information subject to the Privacy Act.

After serious consideration, it is our belief that the recommendations contained in the above-cited memorandum are inconsistent with the spirit and letter of the Privacy Act.

Under present CIA Regulations, an individual seeking access to information pertaining to him is required to submit a notarized statement attesting to his identity. As is recognized in the OMB memorandum of 3 October, consent of the individual for release of information is necessary except under those circumstances as outlined in subsection (b)(3) of the Act. In addition section 3(i) provides criminal penalty to any officer or employee of an agency who discloses information in violation of the Act or rules established thereunder. While we recognize the obligation of congressional offices to respond to constituent inquiries, we feel that provision of information regarding individuals' requests to a congressional office through the mechanism of a routine use as provided in 3(b)(3) of the Privacy Act would be inconsistent with the spirit of the Act and would not have any countervailing benefits to the individual. We understand that there have been a number of problems raised by certain agencies requiring prior written consent from individuals before responding to congressional inquiries. These problems, however, are most applicable to agencies which are involved in grants or benefits such as the Social Security Administration, HEW, or the Veterans Administration. The CIA does not interact with the public in that manner.



I am sure you also recognize that much information held by the Central Intelligence Agency is of a highly sensitive nature and should not be subject to the possibility of dissemination to persons other than the individual concerned. Our experience to date has been that we are able to respond to congressional inquiries within the context of our present regulations. As a general policy, we react to inquiries on behalf of individuals by corresponding directly with the individual, acknowledging the request made through the congressional office and informing the individual as to the requirements for identification pursuant to our regulations. We then inform the congressional office that we are dealing directly with the constituent. We intend to continue this procedure for a number of reasons. First, as outlined above dealing with information of a sensitive nature, we have no assurance of adequate safeguards for storage and access in congressional offices. Second, our experience has indicated that we often need additional biographic data from individual requesters in order to clearly identify information we hold with such requester. Routing such correspondence through congressional offices would be time-consuming and counterproductive. We, of course, will endeavor to insure timely response to requests forwarded through congressional offices and will in all cases notify such offices that we are responding to the individual as a result of the congressional inquiry.

STATINTL

Sincerely,



Form 163a
8-66

REFERENCE

ATTACHMENT

Letter to Honorable James T. Lynn, Director, Office of Management and Budget

cc: Clarence M. Kelley, Director, Federal Bureau of Investigation
Assistant Director McDermott, Federal Bureau of Investigation
Unit Chief Dennis, Federal Bureau of Investigation
John A. Mintz, Federal Bureau of Investigation
Rex Davis, Director, Bureau of Alcohol, Tobacco and Firearms
Marvin Dessler, Chief Counsel, Bureau of Alcohol, Tobacco and Firearms
Vernon D. Acree, Commissioner, U.S. Customs Service
Leonard Lehman, Assistant Commissioner for Regulations and Rulings,
U.S. Customs Service
Henry Dogin, Acting Administrator, Drug Enforcement Administration
Donald Miller, General Counsel, Drug Enforcement Administration
Leonard F. Chapman, Jr., Commissioner, Immigration and Naturalization
Service
Sam Bernsen, General Counsel, Immigration and Naturalization Service
Charles A. Gibb, Chief, Disclosure Staff to Assistant Commissioner for
Compliance, Internal Revenue Service
Harold T. Flanagan, Director, Disclosure Division, Chief Counsel's
Office, Internal Revenue Service
William Hall, Deputy Director, United States Marshals Service
Gerald M. Auerbach, Associate Legal Counsel, United States Marshals Service
C. Neil Benson, Chief Inspector, United States Postal Service
Louis J. Ansaldi, Legal Assistant, United States Postal Service
Lilburn Boggs, Deputy Director, United States Secret Service
Robert Goff, Associate Counsel, United States Secret Service
John F. Blake, Deputy Director for Administration, Central Intelligence Agency

bcc: Mary Lawton, Deputy Assistant Attorney, Department of Justice

OGC/LJK/ccb (Sent 23 December 1975)

Distribution:

Original - Addressee

✓ OGC SUBJ: LEGISLATION-RIGHT OF PRIVACY ACT

1 - LJK Signer

1 - OGC Chrono


15 DEC 1975

MEMORANDUM FOR: Chief, Information and Privacy Staff
Legislative Counsel

SUBJECT : Congressional Inquiries on Behalf of Constituents
and the Privacy Act

As you know, neither the Privacy Act nor the Agency Privacy Act regulations provide for an individual member of Congress to receive information on a constituent from the Agency without prior written consent of the constituent. Recently, OMB suggested that Federal agencies adopt a "routine use" applicable to all records systems that would permit disclosure of information on a constituent to a member of Congress without the express written consent of the constituent. I have reviewed this matter with our General Counsel and with representatives of investigative agencies. I am persuaded that we must continue to require that all requesters of information pursuant to the Privacy Act comply with the identification requirements set forth in our regulations. Accordingly, the Information and Privacy Staff (IPS) shall adhere to the following procedure in responding to inquiries from members of Congress on behalf of their constituents.

- IPS will acknowledge receipt of the request to the constituent and, as necessary, inform the individual of the Agency's identification requirements, i.e., full name, date and place of birth, and a notarized statement attesting to the identity of the constituent.
- Acknowledge receipt of request to the member of Congress advising that the Agency is in direct contact with the constituent. This correspondence will, of course, be ~~coordinated~~ with OLC. *done by*
- Results of the records search shall be forwarded directly to the constituent unless there is a clear written directive from the constituent informing the Agency to forward the information to a designated Congressman.


John F. Blake
Deputy Director
for
Administration

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